

**STATE OF MISSOURI  
CIRCUIT COURT OF JACKSON COUNTY AT INDEPENDENCE  
SIXTEENTH JUDICIAL CIRCUIT**

JEREMIAH W. (JAY) NIXON, )  
Attorney General, )  
Plaintiff, )

v. )

Case No:

7-Eleven, Inc. )  
2711 North Haskell Ave. )  
Dallas, Texas 75204-2906 )

serve: CT Corporation System )  
120 South Central Avenue )  
Clayton, MO 63105 )  
Registered Agent )

and )

Srimad, Inc. )  
(d/b/a 7-Eleven) )  
6680 Mexico Rd. )  
St. Peters, MO 63303 )

serve: Hemant V. Patel )  
6680 Mexico Rd. )  
St. Peters, MO 63303 )  
Registered Agent, )

and )

I.A. Kahn, Inc. )  
(d/b/a/ 7-Eleven) )  
1288 Old Orchard Court )  
Manchester, MO 63011 )

serve: Iftikhar Ahmed )  
12842 G. Portaluca Dr. )  
St. Louis, Mo 63146 )  
Registered Agent )

and )

Bulldog, Inc. )

(d/b/a 7-Eleven) )  
13491 Olive Street )  
Chesterfield, MO 63017 )  
)  
serve: Robert McGlaughlin )  
#5 White Chapel Court )  
O'Fallon, MO 63366 )  
Registered Agent )  
)  
and )  
)  
Hipes, Inc. )  
(d/b/a 7-Eleven) )  
12235 McKelvey Road )  
Maryland Heights, MO 63043 )  
)  
serve: Steven Hipes )  
12235 McKelvey Road )  
Maryland Heights, Mo 63043 )  
Registered Agent )  
)  
and )  
)  
Malik Brothers )  
(d/b/a 7-Eleven) )  
8290 St. Charles Rock Rd. )  
St. Louis MO 63146 )  
)  
serve: Naeem Malik )  
12532 Ardwick Lane, #B )  
St. Louis, MO 63146 )  
Registered Agent )  
)  
and )  
)  
Lalani, Inc. )  
(d/b/a 7-Eleven) )  
2607 Gravois )  
St. Louis, MO 63138 )  
)  
serve: Mumtaz Lalani )  
1150 Burgos St. )  
St. Louis, MO 63138 )

|                                |   |
|--------------------------------|---|
| Registered Agent               | ) |
|                                | ) |
| L.D. Maxwell, Inc              | ) |
| (d/b/a 7-Eleven)               | ) |
| 2107 Schuetz Rd.               | ) |
| Maryland Heights, MO 63021     | ) |
|                                | ) |
| serve: Victor Lee Maxwell, Jr. | ) |
| 915 Lacherie Dr.               | ) |
| St. Louis, MO 63138            | ) |
| Registered Agent               | ) |
|                                | ) |
| and                            | ) |
|                                | ) |
| Domagalski, Inc.               | ) |
| (d/b/a 7-Eleven)               | ) |
| 5200 Chippewa                  | ) |
| St. Louis, MO 63109            | ) |
|                                | ) |
| serve: Timothy Domagalski      | ) |
| 5200 Chippewa                  | ) |
| St. Louis, MO 63109            | ) |
| Regisered Agent                | ) |
|                                | ) |
| and                            | ) |
|                                | ) |
| Brits, Inc.                    | ) |
| (d/b/a 7-Eleven)               | ) |
| 6850 Gravois                   | ) |
| St. Louis, MO 63116            | ) |
|                                | ) |
| serve: Timothy Domagalski      | ) |
| 6850 Gravois                   | ) |
| St. Louis, MO 63116            | ) |
| Registered Agent               | ) |
|                                | ) |
| and                            | ) |
|                                | ) |
| J.R. Stores, Inc               | ) |
| (d/b/a/ 7-Eleven)              | ) |
| 2821 Meramec                   | ) |
| St. Louis, MO 63116            | ) |
|                                | ) |

|                        |   |
|------------------------|---|
| serve: James A. Runion | ) |
| 2821 Meramec           | ) |
| St. Louis, MO 63116    | ) |
| Registered Agent       | ) |
|                        | ) |
| and                    | ) |
|                        | ) |
| Joyce L. James         | ) |
| (d/b/a/ 7-Eleven)      | ) |
| 3150 Gillam Rd.        | ) |
| Kansas City, MO 64109  | ) |
|                        | ) |
| serve: Joyce L. James  | ) |
| 3150 Gillham Rd.       | ) |
| Kansas City, MO 64109  | ) |
| Owner                  | ) |
|                        | ) |
| and                    | ) |
|                        | ) |
| Selena, Inc.           | ) |
| (d/b/a/ 7-Eleven)      | ) |
| 201 Hwy 24, East       | ) |
| Independence, MO 64050 | ) |
|                        | ) |
| serve: Joseph F. Akoni | ) |
| 8250 Watson Rd.        | ) |
| Marlborough, MO 63199  | ) |
| Registered Agent       | ) |
|                        | ) |
| and                    | ) |
|                        | ) |
| Kelly Drummond         | ) |
| (d/b/a/ 7-Eleven)      | ) |
| 1700 Highway M         | ) |
| Barnhart, MO 63012     | ) |
|                        | ) |
| serve: Kelly Drummond  | ) |
| 1700 Highway M         | ) |
| Barnhart, MO 63012     | ) |
| Owner                  | ) |
|                        | ) |
| and                    | ) |
|                        | ) |

Jack Farron )  
(d/b/a/ 7-Eleven) )  
2099 N. Highway 141 )  
Fenton, MO 63026 )  
)  
serve: Jack Farron )  
2099 N. Highway 141 )  
Fenton, MO 63026 )  
Owner )  
)  
and )  
)  
Randy Munton )  
(d/b/a/ 7-Eleven) )  
6909 Southwest Ave. )  
St. Louis, MO 63143 )  
)  
serve: Randy Munton )  
6909 Southwest Ave. )  
St. Louis, MO 63143 )  
Owner )  
)  
and )  
)  
Bola Osikoya )  
(d/b/a/ 7-Eleven) )  
8250 Watson Rd. )  
Webster Groves, MO 63119 )  
)  
serve: Bola Osikoya )  
8250 Watson Rd. )  
Webster Groves, MO 63119 )  
Owner )  
)  
and )  
)  
Jeff Lipe )  
(d/b/a/ 7-Eleven) )  
6703 S. Broadway )  
St. Louis, MO 63111 )  
)  
serve: Jeff Lipe )  
6703 S. Broadway )

|                      |   |
|----------------------|---|
| St. Louis, MO 63111  | ) |
| Owner                | ) |
|                      | ) |
| and                  | ) |
|                      | ) |
| Mary Corder          | ) |
| (d/b/a/ 7-Eleven)    | ) |
| 509 Bates St         | ) |
| St. Louis, MO 63111  | ) |
|                      | ) |
| serve: Mary Corder   | ) |
| 509 Bates St.        | ) |
| St. Louis, MO 63111  | ) |
| Owner                | ) |
|                      | ) |
| and                  | ) |
|                      | ) |
| Mark Johnston        | ) |
| (d/b/a/ 7-Eleven)    | ) |
| 5604 Gravois Ave.    | ) |
| St. Louis, MO 63116  | ) |
|                      | ) |
| serve: Mark Johnston | ) |
| 5604 Gravois Ave.    | ) |
| St. Louis, MO 63116  | ) |
| Owner                | ) |
|                      | ) |
| and                  | ) |
|                      | ) |
| Dave Conder          | ) |
| (d/b/a/ 7-Eleven)    | ) |
| 4948 Christy Blvd.   | ) |
| St. Louis, MO 63116  | ) |
|                      | ) |
| serve: Dave Conder   | ) |
| 4948 Christy Blvd    | ) |
| St. Louis, MO 63116  | ) |
| Owner                | ) |
|                      | ) |
| and                  | ) |
|                      | ) |
| Patrick Flynn        | ) |
| (d/b/a/ 7-Eleven)    | ) |

|                      |   |
|----------------------|---|
| 3765 Gravois Ave.    | ) |
| St. Louis, MO 63116  | ) |
|                      | ) |
| serve: Patrick Flynn | ) |
| 3765 Gravois         | ) |
| St. Louis, MO 63116  | ) |
| Owner                | ) |
|                      | ) |
| and                  | ) |
|                      | ) |
| Mike Foster          | ) |
| (d/b/a/ 7-Eleven)    | ) |
| 2807 Sulphur Ave.    | ) |
| St. Louis, MO 63139  | ) |
|                      | ) |
| serve: Mike Foster   | ) |
| 2807 Sulphur Ave.    | ) |
| St. Louis, MO 63139  | ) |
| Owner                | ) |
|                      | ) |
| Defendants.          | ) |

**PETITION FOR INJUNCTION**  
**AGAINST THE SALE OF TOBACCO PRODUCTS TO MINORS**  
**AND OTHER RELIEF**

The Attorney General brings this action pursuant to RSMo § 407.020 *et. seq.*, and in support states:

**Parties and Jurisdiction**

1. Jeremiah W. (Jay) Nixon is the duly elected and acting Attorney General of the State of Missouri.

2. 7-Eleven, Inc. is a for-profit Texas corporation in good standing with its principal place of business in Dallas, Texas. 7-Eleven, Inc. is authorized to do business in Missouri as a registered foreign corporation.

3. 7-Eleven, Inc., both directly and through its franchisees, operates business establishments in the State of Missouri, including establishments within the City of Kansas City. Those establishments offer for sale to the public various tobacco products.

4. Srimad, Inc. is a franchisee and agent of 7-Eleven, Inc. Srimad, Inc. is a for-profit Missouri corporation in good standing with its principal place of business in St. Peters, Missouri. Srimad, Inc., pursuant to a franchise agreement with 7-Eleven, Inc. does business as 7-Eleven at 6680 Mexico Road, St. Peters, MO.

5. I.A. Kahn, Inc. is a franchisee and agent of 7-Eleven, Inc. I.A. Kahn, Inc. is a for-profit Missouri corporation in good standing with its principal place of business in Manchester, Missouri. I.A. Kahn, Inc., pursuant to a franchise agreement with 7-Eleven, Inc. does business as 7-Eleven at 1288 Old Orchard Court, Manchester, MO.

6. Bulldog, Inc. is a franchisee and agent of 7-Eleven, Inc. Bulldog, Inc. is a for-profit Missouri corporation in good standing with its principal place of business in Chesterfield, Missouri. Bulldog, Inc., pursuant to a franchise agreement with 7-Eleven, Inc. does business as 7-Eleven at 13491 Olive Street, Chesterfield, MO.

7. Hipes, Inc. is a franchisee and agent of 7-Eleven, Inc. Hipes, Inc. is a for-profit Missouri corporation in good standing with its principal place of business in Maryland Heights, Missouri. Hipes, Inc., pursuant to a franchise agreement with 7-Eleven, Inc. does business as 7-Eleven at 12235 McKelvey Road, Maryland Heights, MO.

8. Malik Brothers, Inc. is a franchisee and agent of 7-Eleven, Inc. Malik Brothers Inc. is a for-profit Missouri corporation in good standing with its principal place of business in St.



Louis, Missouri. Malik Brothers, Inc., pursuant to a franchise agreement with 7-Eleven, Inc. does business as 7-Eleven at 8290 St. Charles Rock Road, St. Louis, MO.

9. Lalani, Inc. is a franchisee and agent of 7-Eleven, Inc. Lalani, Inc. is a for-profit Missouri corporation in good standing with its principal place of business in St. Louis, Missouri. Lalani, Inc., pursuant to a franchise agreement with 7-Eleven, Inc. does business as 7-Eleven at 2607 Gravois Road, St. Louis, MO.

10. L.D. Maxwell, Inc. is a franchisee and agent of 7-Eleven, Inc. L.D. Maxwell, Inc. is a for-profit Missouri corporation in good standing with its principal place of business in Maryland Heights, Missouri. L.D. Maxwell, Inc., pursuant to a franchise agreement with 7-Eleven, Inc. does business as 7-Eleven at 2107 Schuetz Road, Maryland Heights, MO.

11. Domagalski, Inc. is a franchisee and agent of 7-Eleven, Inc. Domagalski, Inc. is a for-profit Missouri corporation in good standing with its principal place of business in St. Louis, Missouri. Domagalski, Inc., pursuant to a franchise agreement with 7-Eleven, Inc. does business as 7-Eleven at 5200 Chippewa, MO.

12. Brits, Inc. is a franchisee and agent of 7-Eleven, Inc. Brits, Inc. is a for-profit Missouri corporation in good standing with its principal place of business in St. Louis, Missouri. Brits, Inc., pursuant to a franchise agreement with 7-Eleven, Inc. does business as 7-Eleven at 6850 Gravois Road, St. Louis, MO.

13. J.R. Stores, Inc. is a franchisee and agent of 7-Eleven, Inc. J.R. Stores, Inc. is a for-profit Missouri corporation in good standing with its principal place of business in St. Louis, Missouri. J.R. Stores, Inc., pursuant to a franchise agreement with 7-Eleven, Inc. does business as 7-Eleven at 2821 Meramac, St. Louis, MO.

14. Joyce L. James is a franchisee and agent of 7-Eleven, Inc. Joyce L. James, pursuant to a franchise agreement with 7-Eleven, Inc. does business as 7-Eleven at 3150 Gilham Road, Kansas City, MO.

15. Selena, Inc. is a franchisee and agent of 7-Eleven, Inc. Selena, Inc. is a for-profit Missouri corporation in good standing with its principal place of business in Independence, Missouri. Selena, Inc., pursuant to a franchise agreement with 7-Eleven, Inc. does business as 7-Eleven at 201 Hwy. 24, East, Independence, MO.

16. Kelly Drummond is a franchisee and agent of 7-Eleven, Inc. Kelly Drummond, pursuant to a franchise agreement with 7-Eleven, Inc. does business as 7-Eleven at 1700 Highway M, Barnhart, MO.

17. Jack Farron is a franchisee and agent of 7-Eleven, Inc. Jack Farron, pursuant to a franchise agreement with 7-Eleven, Inc. does business as 7-Eleven at 2099 N. Highway 141, Fenton, MO.

18. Randy Munton is a franchisee and agent of 7-Eleven, Inc. Randy Munton, pursuant to a franchise agreement with 7-Eleven, Inc. does business as 7-Eleven at 6909 Southwest Ave., St. Louis, MO.

19. Bola Osikoya is a franchisee and agent of 7-Eleven, Inc. Bola Osikoya, pursuant to a franchise agreement with 7-Eleven, Inc. does business as 7-Eleven at 8250 Watson Road, Webster Groves, MO.

20. Jeff Lipe is a franchisee and agent of 7-Eleven, Inc. Jeff Lipe, pursuant to a franchise agreement with 7-Eleven, Inc. does business as 7-Eleven at 6703 S. Broadway, St. Louis, MO.

21. Mary Corder is a franchisee and agent of 7-Eleven, Inc. Mary Corder, pursuant to a franchise agreement with 7-Eleven, Inc. does business as 7-Eleven at 509 Bates St., St. Louis, MO.

22. Mark Johnston is a franchisee and agent of 7-Eleven, Inc. Mark Johnson, pursuant to a franchise agreement with 7-Eleven, Inc. does business as 7-Eleven at 5604 Gravois Ave., St. Louis, MO.

23. Dave Conder is a franchisee and agent of 7-Eleven, Inc. Dave Conder, pursuant to a franchise agreement with 7-Eleven, Inc. does business as 7-Eleven at 4948 Christy Blvd., St. Louis, MO.

24. Patrick Flynn is a franchisee and agent of 7-Eleven, Inc. Patrick Flynn, pursuant to a franchise agreement with 7-Eleven, Inc. does business as 7-Eleven at 3765 Gravois Ave., St. Louis, MO.

25. Mike Foster is a franchisee and agent of 7-Eleven, Inc. Mike Foster, pursuant to a franchise agreement with 7-Eleven, Inc. does business as 7-Eleven at 2807 Sulphur Ave., St. Louis, MO.

26. This Court has subject matter jurisdiction over this action pursuant to § 407.100, RSMo 1994.

27. This Court has personal jurisdiction over 7-Eleven, Inc., because 7-Eleven, Inc. is registered to do business in Missouri, has transacted and continues to transact business within the state of Missouri, and all acts giving rise to the causes of action described in this petition took place within the state of Missouri.

28. This Court has personal jurisdiction over each of the other defendants identified above because each is a corporation registered to do business in the state of Missouri or an individual operating a business in Missouri, each has transacted and continues to transact business within the state of Missouri, and every act giving rise to the causes of action described in this petition took place within the state of Missouri.

29. Venue is proper in this Court pursuant to § 407.100.7, RSMo 1994 and/or §§ 508.010 and 508.040, RSMo 1994 because one or more of the acts which is alleged to violate § 407.020 occurred in this judicial circuit and because at least one of the defendants resides in this judicial circuit or keeps an agent for the transaction of business within this circuit.

### **Background on Tobacco and Youth**

30. According to the Federal Food and Drug Administration, more than 80% of tobacco users began their habit before the age of 18.

31. According to the Federal Food and Drug Administration, the average adolescent tobacco user begins to smoke at 14 & 1/2 years of age and becomes a daily smoker before the age of 18.

32. According to The Campaign for Tobacco Free Kids, 27,000 Missouri children under the age of 18 become new daily smokers each year.

33. According to the Federal Food and Drug Administration, of the 3000 young people throughout the United States who become regular smokers each day, nearly one-third will have their lives shortened by tobacco-related diseases.

34. According to the Institute for Health Policy of the Heller Graduate School at Brandeis University, most adolescent smokers purchase tobacco products at retail stores, even though the sale of tobacco products to a minor is prohibited in every state.

35. Since 1992, §§ 407.931.1 and 407.931.2 RSMo have made it illegal in the State of Missouri to sell or distribute tobacco products to persons under the age of 18 years.

36. Beginning in 1998, the Missouri Department of Mental Health, Division of Alcohol and Drug Abuse ("DMH"), in conjunction with the federal Food and Drug Administration ("FDA"), conducted compliance checks on establishments selling tobacco products to ascertain which establishments sell tobacco products to minors. For each compliance check, DMH engaged the services of an adult agent and a minor under the age of 18 years. The minor entered an establishment and requested to purchase a tobacco product. If asked his or her age, the minor responded truthfully. If asked for identification, the minor produced a document that accurately reflected his or her age or responded that he or she did not possess any identification, if that were in fact the case. At no time during any compliance check did the minor misrepresent his or her age to the establishment. The adult agent who accompanied the minor to the establishment location recorded the result of each purchase attempt. These compliance checks in cooperation with the FDA ceased on March 21, 2000, when the United States Supreme Court declared that the FDA lacked any authority to regulate the sale or delivery of tobacco products.

37. Between January 1, 1998, and March 21, 2000, DMH conducted a total of 8,289 compliance checks in the State of Missouri, of which 2,320 or 28% resulted in illegal sales of tobacco to a minor.

### **The Missouri Merchandising Practices Act**

38. Section 407.020, RSMo provides, in pertinent part:

The act, use, or employment by any person of any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce or the solicitation of any funds for any charitable purpose, as defined in Section 407.453, in or from the state of Missouri, is declared to be an unlawful practice. ... Any act, use or employment declared unlawful by this subsection violates this subsection whether committed before, during or after the sale, advertisement or solicitation. [emphasis added].

39. Section 407.100, RSMo 1994, provides:

1. Whenever it appears to the attorney general that a person has engaged in, is engaging in, or is about to engage in any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter, the attorney general may seek and obtain, in an action in a circuit court, an injunction prohibiting such person from continuing such methods, acts, uses, practices, or solicitations, or any combination thereof, or engaging therein, or doing anything in furtherance thereof.

2. In any action under subsection 1 of this section, and pursuant to the provisions of the Missouri Rules of Civil Procedure, the attorney general may seek and obtain temporary restraining orders, preliminary injunctions, temporary receivers, and the sequestering of any funds or accounts if the court finds that funds or property may be hidden or removed from the state or that such orders or injunctions are otherwise necessary.

3. If the court finds that the person has engaged in, is engaging in, or is about to engage in any method, act, use, practice or solicitation, or any combination thereof, declared to be unlawful by this chapter, it may make such orders or judgments as may be necessary to prevent such person from employing or continuing to employ, or to prevent the recurrence of, any prohibited methods, acts, uses, practices or solicitations, or any combination thereof, declared to be unlawful by this chapter.

\* \* \* \* \*

6. The court may award to the state a civil penalty of not more than one thousand dollars per violation; except that, if the person who would be liable for such penalty shows, by a preponderance of the evidence, that a violation resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adopted to avoid the error, no civil penalties shall be imposed.

7. Any action under this section may be brought in the county in which the defendant resides, in which the violation alleged to have been committed occurred, or in which the defendant has his principal place of business.

40. "Merchandise" is defined by § 407.010(4) as "any objects, wares, goods, commodities, intangibles, real estate or services[.]"

41. "Person" is defined by § 407.010(5) as "any natural person or his legal representative, partnership, firm, for profit or not for profit corporation, whether domestic or foreign, company, foundation, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or cestui que trust thereof[.]"

42. "Sale" is defined by § 407.010(6) as "any sale, lease, offer for sale or lease, or attempt to sell or lease merchandise for cash or credit[.]"

43. "Trade" or "commerce" is defined by § 407.010(7) as "the advertising, offering for sale, sale, or distribution, or any combination thereof, of any services and any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value wherever situated. The terms 'trade' and 'commerce' include any trade or commerce directly or indirectly affecting the people of this state."

44. 15 CSR § 60-8.020 defines "unfair practice" as follows:

(1) An unfair practice is any practice which -

(A) Either -

1. Offends any public policy as it has been established by the Constitution, statutes or common law of this state, or by the Federal Trade Commission, or its interpretive decisions; or

2. Is unethical, oppressive or unscrupulous; and

(B) Presents a risk of, or causes, substantial injury to consumers.

(2) Proof of deception, fraud or misrepresentation is not required to prove unfair practices as used in section 407.020.1, RSMo.

45. 15 CSR 60-8.090 defines "illegal conduct" as follows:

(1) It is an unfair practice for any person in connection with the advertisement or sale of merchandise to engage in any method, use or practice which--

(A) Violates state or federal law intended to protect the public; and

(B) Presents a risk of, or causes substantial injury to consumers.

### **Missouri Tobacco Laws**

46. Section 407.931.1, RSMo states that "[i]t shall be unlawful for any person to engage in tobacco product distribution to persons under eighteen years of age."

47. Section 407.931.2, RSMo states in pertinent part that "[n]o person shall sell any tobacco product or distribute any tobacco product or rolling papers to any minor."

48. The term "distribution" as used in Section 407.931.1, RSMo is defined in Section 407.925(2), RSMo as "a conveyance to the public by sale, barter, gift or sample."



49. The term "tobacco product" as used in Section 407.931.1, RSMo is defined in Section 407.925(10), RSMo as "any substance containing tobacco leaf, including, but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, or dipping tobacco."

50. Section 407.927, RSMo provides:

The owner of an establishment at which tobacco products or rolling papers are sold at retail or through vending machines shall cause to be prominently displayed in a conspicuous place at every display from which tobacco products are sold and on every vending machine where tobacco products are purchased a sign that shall:

(1) Contain in red lettering at least one-half inch high on a white background the following: "It is a violation of state law for cigarettes or other tobacco products to be sold to any person under the age of eighteen"; and

(2) Include a depiction of a pack of cigarettes at least two inches high defaced by a red diagonal diameter of a surrounding red circle, and the words "Under 18".

51. It is the public policy of the State of Missouri that the distribution of tobacco products to minors is unlawful.

52. In the State of Missouri the distribution or sale of tobacco products to minors and the failure to post signs in conformance with § 407.927 are unlawful practices prohibited by § 407.020.1, RSMo.

## **COUNT I**

### **7-Eleven, Inc.'s Franchisees Have Committed Unfair Practices By Selling Tobacco to Minors**

53. The Attorney General incorporates by reference paragraphs 1 through 52 above as if fully set forth herein.

54. On 2/20/99 and 6/17/99, Srimad, Inc., at its 7-Eleven store identified above, sold and did otherwise distribute tobacco products to a person under the age of 18 years.

55. On 2/6/99 and 3/8/99, I.A. Kahn, Inc., at its 7-Eleven store identified above, sold and did otherwise distribute tobacco products to a person under the age of 18 years.

56. On 10/2/99 and 1/22/00, Bulldog, Inc. at its 7-Eleven store identified above, sold and did otherwise distribute tobacco products to a person under the age of 18 years.

57. On 11/16/98 and 5/27/99, Hipes, Inc. at its 7-Eleven store identified above, sold and did otherwise distribute tobacco products to a person under the age of 18 years.

58. On 9/21/98 and 12/29/98, Malik Brothers, Inc., at its 7-Eleven store identified above, sold and did otherwise distribute tobacco products to a person under the age of 18 years.

59. On 10/20/98 and 1/23/99, Lalani, Inc., at its 7-Eleven store identified above, sold and did otherwise distribute tobacco products to a person under the age of 18 years.

60. On 9/21/98 and 9/25/99, L.D. Maxwell, Inc. at its 7-Eleven store identified above, sold and did otherwise distribute tobacco products to a person under the age of 18 years.

61. On 9/1/98 and 2/22/99, Domagalski, Inc., at its 7-Eleven store identified above, sold and did otherwise distribute tobacco products to a person under the age of 18 years.

62. On 9/15/98 and 1/23/99, Brits, Inc., at its 7-Eleven store identified above, sold and did otherwise distribute tobacco products to a person under the age of 18 years.

63. On 9/30/98 and 1/23/99, J.R. Stores, Inc, at its 7-Eleven store identified above, sold and did otherwise distribute tobacco products to a person under the age of 18 years.

64. On 2/15/2000, Joyce L. James, at her 7-Eleven store identified above, sold and did otherwise distribute tobacco products to a person under the age of 18 years.

65. On 9/19/98, Selena, Inc., at its 7-Eleven store identified above, sold and did otherwise distribute tobacco products to a person under the age of 18 years.

66. 9/12/98 and 10/21/99, Kelly Drummond, at her 7-Eleven store identified above, sold and did otherwise distribute tobacco products to a person under the age of 18 years.
67. On 9/12/98 and 11/13/99, Jack Farron, at his 7-Eleven store identified above, sold and did otherwise distribute tobacco products to a person under the age of 18 years.
68. On 9/15/98 and 2/13/99, Randy Munton, at his 7-Eleven store identified above, sold and did otherwise distribute tobacco products to a person under the age of 18 years.
69. On 9/2/98 and 1/27/99, Bola Osikoya, at his 7-Eleven store identified above, sold and did otherwise distribute tobacco products to a person under the age of 18 years.
70. On 11/14/98 and 3/9/88, Jeff Lipe, at his 7-Eleven store identified above, sold and did otherwise distribute tobacco products to a person under the age of 18 years.
71. On 12/5/98 and 3/22/99, Mary Corder, at her 7-Eleven store identified above, sold and did otherwise distribute tobacco products to a person under the age of 18 years.
72. On 9/30/98 and 1/23/99, Mark Johnston, at his 7-Eleven store identified above, sold and did otherwise distribute tobacco products to a person under the age of 18 years.
73. On 9/3/98 and 1/23/99, Dave Conder, at his 7-Eleven store identified above, sold and did otherwise distribute tobacco products to a person under the age of 18 years.
74. On 9/3/98 and 1/23/99, Patrick Flynn, at his 7-Eleven store identified above, sold and did otherwise distribute tobacco products to a person under the age of 18 years.
75. On 9/30/98 and 1/12/00, Mike Foster, at his 7-Eleven store identified above, sold and did otherwise distribute tobacco products to a person under the age of 18 years.

76. The foregoing 7-Eleven franchisees have, on each occasion identified above, committed an "unfair practice" that violates § 407.020 RSMo and is enjoined under § 407.100 RSMo.

**Prayer for Relief Against 7-Eleven, Inc.'s Franchisees**  
**For Unfair Practice of Selling Tobacco To Minors**

**WHEREFORE** Plaintiff respectfully requests that this Court enter an Order:

- a) finding that each individual 7-Eleven store committed an unfair practice on each occasion when it sold a tobacco product to a minor on the dates described in this petition;
- b) directing that each individual 7-Eleven store shall, jointly and severally, pursuant to § 407.130 RSMo, pay to the State of Missouri, in addition to normal court costs, the cost of the investigation and prosecution of this action;
- c) directing that each individual 7-Eleven store pay civil penalties under § 407.100 in such amount as this Court deems appropriate;
- d) permanently enjoining each individual 7-Eleven store from selling tobacco to minors;
- e) directing that each individual 7-Eleven store consent to the contact of its agents/employees by representatives of the Attorney General's office and the DMH regarding the sale of tobacco products to minors;
- f) directing that any violation of this Court's injunctive order shall be subject to a civil penalty of not more than \$5,000.00 plus payment, in addition to normal court costs, of the cost of the investigation and prosecution of the violation;
- g) any other relief this Court deems fair and reasonable.

## COUNT II

### **7-Eleven, Inc.'s Franchisees Have Committed Unfair Practices By Failing To Post Required Signs**

77. The Attorney General incorporates by reference paragraphs 1 through 76 above as if fully set forth herein.

78. As of May 24, 2000, Bulldog, Inc., at its 7-Eleven store identified above, failed to display legally required signs and warnings regarding sale of tobacco products to minors in violation of § 407.927.

79. As of May 24, 2000, Hipes, Inc., at its 7-Eleven store identified above, failed to display legally required signs and warnings regarding sale of tobacco products to minors in violation of § 407.927.

80. As of May 24, 2000, Lalani, Inc., at its 7-Eleven store identified above, failed to display legally required signs and warnings regarding sale of tobacco products to minors in violation of § 407.927.

81. As of May 24, 2000, Domagalski, Inc., at its 7-Eleven store identified above, failed to display legally required signs and warnings regarding sale of tobacco products to minors in violation of § 407.927.

82. As of May 24, 2000, Brits, Inc., at its 7-Eleven store identified above, failed to display legally required signs and warnings regarding sale of tobacco products to minors in violation of § 407.927.

83. As of May 24, 2000, Jack Farron at his 7-Eleven store identified above, failed to display legally required signs and warnings regarding sale of tobacco products to minors in violation of § 407.927.

84. As of May 24, 2000, Bola Osikoya at his 7-Eleven store identified above, failed to display legally required signs and warnings regarding sale of tobacco products to minors in violation of § 407.927.

85. As of May 24, 2000, Jeff Lipe at his 7-Eleven store identified above, failed to display legally required signs and warnings regarding sale of tobacco products to minors in violation of § 407.927.

86. As of May 24, 2000, Mary Corder at her 7-Eleven store identified above, failed to display legally required signs and warnings regarding sale of tobacco products to minors in violation of § 407.927.

87. As of May 24, 2000, Mark Johnston at his 7-Eleven store identified above, failed to display legally required signs and warnings regarding sale of tobacco products to minors in violation of § 407.927.

88. As of May 24, 2000, Dave Conder at his 7-Eleven store identified above, failed to display legally required signs and warnings regarding sale of tobacco products to minors in violation of § 407.927.

89. As of May 24, 2000, Mike Foster at his 7-Eleven store identified above, failed to display legally required signs and warnings regarding sale of tobacco products to minors in violation of § 407.927.

90. By failing to comply with the requirements of § 407.927, the foregoing 7-Eleven stores have committed and continue to commit acts which constitute an "unfair practice" that violates § 407.020 RSMo and is therefore enjoined under § 407.100 RSMo.

**Prayer for Relief For the Unfair Practices of 7-Eleven, Inc.'s Franchisees  
For Failure to Post Required Signs**

**WHEREFORE** Plaintiff respectfully requests that this Court enter an Order:

- a) finding that each individual 7-Eleven store that is not in compliance with the signage requirements of § 407.927 RSMo has committed and continues to commit an unfair practice;
- b) that each individual 7-Eleven store shall, jointly and severally, pursuant to § 407.130 RSMo, pay to the State of Missouri, in addition to normal court costs, the cost of the investigation and prosecution of this action;
- c) that each individual 7-Eleven store pay civil penalties under § 407.100 in such amount as this Court deems appropriate;
- d) directly each individual 7-Eleven store to immediately bring itself into compliance with the signage requirements of § 407.927;
- e) that each individual 7-Eleven consent to the contact of its agent/employees by representatives of the Attorney General's office and the DMH regarding the sale of tobacco products to minors;

f) that any violation of this Court's injunctive order shall be subject to a civil penalty of not more than \$5,000.00 plus payment, in addition to normal court costs, of the cost of the investigation and prosecution of the violation;

g) any other relief this Court deems fair and reasonable.

### **COUNT III**

#### **Direct Liability of 7-Eleven, Inc. for Stores It Owns and Operates in Missouri**

91. The Attorney General incorporates by reference paragraphs 1 through 90 above as if fully set forth herein.

92. 7-Eleven, Inc. does business as 7-Eleven at 13854 S. US Highway 71, Grandview, MO.

93. 7-Eleven, Inc. does business as 7-Eleven at 11108 Grandview, Kansas City, MO.

94. 7-Eleven, Inc. does business as 7-Eleven at 10615 Blue Ridge Blvd., Kansas City, MO.

95. On 8/19/99, 7-Eleven, Inc., at its 13854 S. US Hwy. 71, Grandview, Missouri 7-Eleven store, sold and did otherwise distribute tobacco products to a person under the age of 18 years.

96. On 9/2/99 7-Eleven, Inc., at its 11108 Grandview, Kansas City, Missouri 7-Eleven store, sold and did otherwise distribute tobacco products to a person under the age of 18 years.

97. On 11/19/98, 7-Eleven, Inc., at its 10615 Blue Ridge Blvd., Kansas City, Missouri 7-Eleven store, sold and did otherwise distribute tobacco products to a person under the age of 18 years.



98. As of May 24, 2000, 7-Eleven, Inc. at its store located at 10615 Blue Ridge Blvd., Kansas City, MO 64134 failed to display legally required signs and warnings regarding sale of tobacco products to minors in violation of § 407.927.

99. 7-Eleven, Inc., therefore, in at least the locations described above, has committed and is committing acts which constitute an "unfair practice" that violates § 407.020 RSMo and is therefore enjoined under § 407.100 RSMo.

#### **COUNT IV**

##### **Vicarious Liability of 7-Eleven, Inc. For the Acts of Its Franchisees in Missouri**

100. The Attorney General incorporates by reference paragraphs 1 through 99 above as if fully set forth herein.

101. Since January 1, 1998, one hundred sixty-four (164) compliance checks have been performed at 7-Eleven stores throughout the State of Missouri. Seventy-three (73) of the compliance checks (45%) resulted in illegal sales of tobacco products to minors. This rate is substantially higher than the statewide rate for all retail establishments checked in the same period (28%). The rate of illegal tobacco sales to minors at 7-Eleven stores in Missouri (45%) is more than twice as high as the rate of illegal sales in 7-Eleven stores nationwide (22%).

102. Each of these illegal sales took place at 7-Eleven stores that were operated pursuant to a franchise agreement with 7-Eleven, Inc., or at 7-Eleven stores that were owned and operated by 7-Eleven, Inc. directly.

103. 7-Eleven Inc. has the right or power to direct and control, and does in fact direct and control, the conduct of its franchisees. 7-Eleven, Inc. exercises direction and control over its

franchisees through operation manuals, periodic operation notices, management training, inspections and other means.

104. According to 7-Eleven, Inc. it owns the land, building and equipment for each of its franchise stores. 7-Eleven, Inc. leases to its franchisees a ready-to-operate 7-Eleven store that has been fully equipped and stocked.

105. 7-Eleven, Inc. and its franchisees share the gross profit of the stores, and thus 7-Eleven, Inc. has a vested interest in increasing store sales generally and the sales of tobacco products in particular.

106. Tobacco products comprise more than 25% of sales in 7-Eleven stores nationwide.

107. In addition to the land, building and equipment, 7-Eleven, Inc. pays for the store utilities, property taxes and ongoing store services such as merchandising, recordkeeping, advertising, store audits, business counseling and preparation of financial statements.

108. 7-Eleven, Inc. is not only a franchisor, but also serves as landlord, financing source, business advisor and recordkeeper to its franchisees.

109. 7-Eleven, Inc. provides comprehensive initial training to franchisees on how to operate and manage their stores. 7-Eleven, Inc.'s franchise system is among the most field-intensive in the franchising industry. Management personnel visit with franchisees at least once every week for a several-hour appointment and counsel them on all aspects of the business.

110. 7-Eleven, Inc. prepares monthly financial and marketing records for the franchisee's store. Included among these records are profit-and-loss statements and balance sheets, financial activity summaries (e.g. daily sales receipts, purchases cash expenditures) as reported by the franchisee, and inventory movement analysis by product category. Under this

system, the franchisee has current, professionally prepared information regarding his or her store's financial and operating condition, as well as current updates of all activity in the store's open account. As part of an extensive system of checks and balances to ensure the accuracy of all accounting, reports are sent to the franchisee for his or her verification.

111. 7-Eleven, Inc. has the authority to train and monitor its franchisees on the prohibition of sales of tobacco products to minors. 7-Eleven, Inc. has the authority to require its franchisees to display the signs required by § 407.927 RSMo.

112. 7-Eleven, Inc. is vicariously liable for the illegal sales of tobacco products by its franchisees as described above, and for the failure of its franchisees to post the signs required by § 407.927 as described above, and for its franchisees' illegal conduct and unfair practices in violation of § 407.020.

## **COUNT V**

### **7-Eleven, Inc.'s Direct Liability For Failure To Take All Necessary Measures To Prevent the Sale of Tobacco Products To Minors and To Ensure Legally Required Signage**

113. The Attorney General incorporates by reference paragraphs 1 through 112 above as if fully set forth herein.

114. Pursuant to its franchise agreements, 7-Eleven, Inc. has the right or power to direct and control the conduct of its franchisees.

115 7-Eleven, Inc. benefits financially from the illegal sales of tobacco to minors committed by its franchisees.

116. 7-Eleven, Inc. has failed to take all necessary measures to ensure that its Missouri franchisees post all signs required by § 407.927 and to prevent its Missouri franchisees from selling tobacco products to minors.

117. 7-Eleven, Inc.'s failure has directly caused at least 73 instances of illegal conduct and unfair practices in violation of § 407.020 resulting from the sale of tobacco products to minors, and at least an additional 13 instances of illegal conduct and unfair practices in violation of § 407.020 resulting from the failure to post signs required by § 407.927.

## **COUNT VI**

### **7-Eleven, Inc. Has Engaged in Tobacco Product Distribution To Persons Under Eighteen Years of Age In Violation of § 407.020**

118. The Attorney General incorporates by reference paragraphs 1 through 117 above as if fully set forth herein.

119. 7-Eleven, Inc. is engaged in tobacco product distribution to the general public. All of the 7-Eleven stores in the State of Missouri sell tobacco products to the public. The sale of tobacco products constitutes a significant portion (25%) of the revenue received by 7-Eleven, Inc.

120. Pursuant to its franchise agreements, 7-Eleven, Inc. has the right or power to direct or control the conduct of its franchisees.

121. 7-Eleven, Inc. benefits financially from the illegal sales of tobacco to minors committed by its franchisees.

122. 7-Eleven, Inc.'s distribution of tobacco products in Missouri has directly caused 73 instances of illegal conduct and unfair practices in violation of § 407.020 resulting from the sale of tobacco products to minors.

**Prayer for Relief Regarding 7-Eleven, Inc.**

**WHEREFORE** Plaintiff respectfully requests that this Court enter an Order:

a) finding that 7-Eleven, Inc. has directly committed and is committing unfair trade practices in the stores that it owns and operates in Missouri by failing to comply with the signage requirements of § 407.927 and by selling tobacco products to minors in violation of § 407.020;

b) finding that 7-Eleven, Inc. is vicariously liable for unfair trade practices committed by its franchisees in violation of § 407.020 when these franchisees illegally sold tobacco products to minors in Missouri on 70 separate occasions since January 1, 1998, and when ten of these franchisees failed to comply with the signage requirements of § 407.927;

c) finding that 7-Eleven, Inc. has directly committed and is committing unfair trade practices in violation of § 407.020 by failing to implement all necessary measures to ensure that its franchisees post such signs regarding the prohibition on the sale of tobacco products to minors as are required by § 407.927, and by failing to prevent the illegal sale of tobacco products to minors by its franchisees;

d) finding that 7-Eleven, Inc. has directly committed and is committing an unfair trade practice in violation of § 407.020 by engaging in tobacco product distribution to persons under eighteen years of age;

e) directing that 7-Eleven, Inc. shall, pursuant to Section 407.130, RSMo, pay to the State of Missouri, in addition to normal court costs, the cost of the investigation and prosecution of this action;

f) assessing civil penalties against 7-Eleven, Inc. pursuant to § 407.100 in such amount as the Court shall deem appropriate;

- g) permanently enjoining 7-Eleven, Inc. from selling tobacco to minors;
- h) directing that 7-Eleven, Inc. bring each and every one of its Missouri stores and Missouri franchisees' stores into compliance with the signage requirements of § 407.927;
- i) directing that 7-Eleven, Inc. shall be deemed to have given its consent to future contacts between representatives of the Attorney General's office and the DMH, and 7-Eleven, Inc.'s agent/employees regarding the sale of tobacco products to minors;
- j) indicating that any violation of the Court's order shall be subject to a civil penalty of not more than \$5,000.00 plus payment, in addition to normal court costs, of the cost of the investigation and prosecution of the violation; and
- k) any other relief this Court deems fair and reasonable.

Respectfully submitted,

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